IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.435 OF 1998

Mafatlal Finance Company Ltd. ..Petitioner.

Vs.

Link Polyester Ltd. ..Respondent.

...

Mr. Kezee A. Kharawala for the Petitioner.
None for the Respondent.

...

CORAM: **DR. D.Y. CHANDRACHUD, J.**

21st June, 2007.

P.C. :

1. The claim of the Petitioner in the Company Petition for winding up arose out of a loan- cum- hypothecation agreement dated 31st March, 1997 for the purchase of an imported vehicle. The amount outstanding under the hire facility was Rs.17,58,522.21 as on 4th December, 1997. There was a default by the company in paying the outstanding installments and the post dated cheques were returned upon presentation. There was no reply to the statutory notice sent to the registered office of the company prior to the institution of the winding up proceedings.

None appeared on behalf of the company even at the stage of admission and the company has remained absent thereafter.

2. Counsel appearing for the Petitioner has placed on the record an order dated 9th February, 2001 passed in Notice of Motion 203 of 1999 in a suit instituted by the Petitioner (Suit 153 of 1999) for the recovery of dues. By the order of the Court the Court Receiver who had taken possession of the vehicle in the meantime was permitted to sell the vehicle. Learned counsel states that in pursuance thereof the vehicle was sold by public auction and an amount of Rs.5.50 lacs was recovered leaving the balance unrecouped.

3. The company has failed to advance any defence on merits. The facts before the Court demonstrate that the company is unable to pay its debts. An affidavit of publication has been filed. The Company Petition is made absolute in terms of prayer clauses (a) and (b).